

## REMARKS

1. In response to the Office Action mailed October 9, 2007, Applicant respectfully requests reconsideration. Claims 1, 2, 4-9, 14, 20-24, 27-28, 30-31, and 89-116 were last presented for examination. Applicant wishes to call to Examiner's attention an error in the claim numbering in the Amendment to the Claims provided in the previous Response and Amendment filed on July 2, 2007. Specifically, the claim numbering jumps from claim 110 to 112, without a claim 111. Applicant has renumbered the claims in the Amendment to the Claims submitted herewith and amended claims 112 and 113 to recite their respective dependencies based on the new claim numbering.
2. In the outstanding Office Action, claims 1, 2, 4-9, 14, 20-24, 27-28, 30-31, and 89-116 were rejected. No claims were allowed or objected to. By the foregoing Amendments, claims 1, 2, 4-5, 14, 30-31, 93, 95, 99, 106-115 were amended. No claims have been canceled or added. Thus, upon entry of this paper, claims 1, 2, 4-9, 14, 20-24, 27-28, 30-31, and 89-115 remain pending in this application. Claim 1, 93 and 108 are independent claims.
3. Based upon the above Amendments and following Remarks, Applicant respectfully requests that all outstanding rejections be reconsidered and withdrawn.

### *Art of Record*

4. Applicant acknowledges receipt of form PTO-892 listing additional reference(s) considered by the Examiner.

### *Rejections of Claims 114-116 Under 35 USC § 112*

5. Claims 114-116 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, claims 114-116 were rejected for being dependent on a non-existent claim (Claim 117). Applicant has amended claims 114-116 in accordance with Examiner's suggestion so that they are now dependent from an existing claim (Claim 108). These amendments are believed not to introduce new matter, and their entry is respectfully requested. Accordingly, Applicant respectfully requests that these rejections of claims 114-116 be reconsidered and withdrawn.

***Claim Rejections Under 35 U.S.C. §§ 102 and 103***

6. Claims 1-2, 4, 7-9, 14, 20, 24, 27-28, 30-31, 89-93, 98-100, 104-110 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pub. No. 2002/0019669 to Berrang (hereinafter “Berrang”) of, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Berrang. Applicant respectfully requests that these rejections be reconsidered and withdrawn.

7. Applicant’s claimed invention is directed to an implantable device having a non-osseointegrating housing outer surface and osseointegrating protuberances. The differentiated configuration of the housing outer surface and the protuberances permits selective osseointegration of the protuberances, while preventing the housing from becoming osseointegrated.

8. In contrast, there is no disclosure, teaching or suggestion in Berrang of an implantable device having this differentiated configuration for selective osseointegration. In fact, Berrang does not differentiate the types of materials that can be used for the housing and the screws and only generally discloses that the materials be biocompatible:

All materials in contact with tissues are preferably comprised of biomaterials such as gold, platinum, palladium tantalum, rhenium, rhodium, titanium, medical grade silicone and bioinert polymers, such as the polyfluorocarbons, and specifically the fluoropolymer FEP.

Berrang at ¶ [0068].

9. Specifically, independent claims 1, 93 and 108, as currently amended, recite an implantable device comprising, among other things, a housing having an outer surface that is configured to prevent osseointegration of the housing with the patient’s bone. This feature facilitates removal or extrication of the implantable device, if desired, from the patient’s bone. In the examples of the embodiments disclosed in the specification, the housing outer surface may be configured to prevent osseointegration by coating a material that prevents osseointegration, such as biocompatible silicone or by forming the housing from a biocompatible metallic, ceramic and polymeric material. *See* Specification, at ¶ [0035].

10. Berrang does not disclose or teach an implantable device having this claimed feature and therefore cannot anticipate claims 1, 93 and 108, and the claims depending therefrom. In fact, Berrang discloses that the housing may be coated with materials which would encourage or facilitate osseointegration, such as titanium, gold and platinum. *See* Berrang at ¶ [0069]. Unlike the outer surface of housing in Applicant's claimed device, the purpose for the coating in Berrang is to hermetically encapsulate the internal components of the housing which are not biocompatible. Berrang does not disclose, teach or suggest selecting a coating based on whether it is capable of preventing osseointegration with the bone.

11. The Examiner asserts that "Berrang further discloses that the housing can be made of ceramic (¶¶ 23, 25)" and that "Applicant's specification discloses that ceramic is a non-osseointegrating material (Applicant Spec. ¶ 35)." Office Action at pages 3 and 4. Contrary to the Examiner's assertion, Berrang discloses in ¶¶ 23, 25 that the *insulated substrate* is comprised of ceramic and that the key components *within* the housing sections are mounted on the ceramic substrate. The components are then sealed with an additional coating to hermetically seal the components. Berrang discloses hermetically sealing the housing by coating the housing with material that is known to encourage or facilitate osseointegration, such as titanium, platinum, and gold. Berrang at ¶ [0080]. Because the ceramic substrate does not contact the patient's bone, it cannot be said to prevent osseointegration of the housing outer surface with the patient's bone.

12. Claims 5-6, 21-23, 94-96, 101-103 and 112-113 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berrang as applied to claims 1, 93 and 98 above, and further in view of Håkansson, U.S. Pat. No. 6,840,919 (hereinafter "Håkansson"). Applicant respectfully requests that these rejections be reconsidered and withdrawn.

13. Regarding claims 5-6, 21-23, 94-96, 101-103 and 112-113, Examiner states that Berrang discloses the claimed invention as disclosed in detail above, except for the elongated flanges that hold the disposed protuberances at opposing angles. Office Action at page 4. For the reasons explained above, Berrang does not disclose or teach an implantable device having each and every element in independent claims 1, 93 and 108. Nor does Håkansson disclose or teach the elements that are not provided by Berrang. Because no combination of Berrang and Håkansson disclose or teach each and every element of independent claims 1, 93 and 108, Applicant

respectfully submit that claims 5-6, 21-23, 94-96, 101-103 and 112-113, depending therefrom, are allowable over Berrang in view of Håkansson.

14. Applicant further disagrees with Examiner's characterization of Håkansson, in which Examiner states:

Håkansson teaches that it is known to use flanges and anchoring devices that are disposed at an opposing angle that is approximately 85 degrees and in the same plane as set forth in Figures 1 and 2 to provide anchoring means for the implantable device.

Office Action at pages 4-5. Contrary to the Examiner's characterization, Håkansson does not disclose or teach varying the opposing angles between the longitudinal axes of the protuberances and the implant axis. In addition, Håkansson does not disclose, teach or suggest varying the opposing angles as a means to effect a permanent or removable implantation.

15. The sole basis for the Examiner's rejection appears to be based on Figures 1 and 2 of Håkansson, as Examiner has not cited or identified the corresponding description of Figures 1 and 2 or any other disclosure in the specification. Although Figure 1 depicts the screws 3 implanted in the bone, Figures 1 or 2 fail to depict or show the implant axis or the longitudinal axes of the screws from which the opposing angle can be determined. Therefore, there is no support for the Examiner's assertion that the anchoring devices, or the screws, are disposed at any specified opposing angle, let alone 85 degrees. Moreover, there is no corresponding disclosure in the specification to disclose, teach or suggest that the anchoring devices are set at any specified angles.

16. For these reasons alone, Applicant respectfully requests that the rejections under 35 U.S.C. §§ 103 of claims 5-6, 21-23, 94-96, 101-103 and 112-113, as presently amended, be reconsidered and withdrawn.

***Conclusion***

17. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

18. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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